

1 HONORABLE RONALD B. LEIGHTON
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 ROSEMERE NEIGHBORHOOD
11 ASSOCIATION, COLUMBIA
12 RIVERKEEPER, and NORTHWEST
13 ENVIRONMENTAL DEFENSE CENTER,

14 Plaintiffs,

15 v.

16 CLARK COUNTY, TOM MIELKE, in his
17 capacity as Clark County Commissioner,
18 MARC BOLDT, in his capacity as Clark
19 County Commissioner, STEVE STUART, in
20 his capacity as Clark County Commissioner,
21 and BILL BARRON, in his capacity as Clark
22 County Administrator

23 Defendants.

24 No. 11-cv-5213 RBL

25 ORDER DENYING MOTION TO
26 ESTABLISH BOND

27 I. ISSUE

28 Before the Court is Defendants' Motion to Establish Bond. (Dkt. # 40.) Defendants
request that Plaintiffs be required to post a bond of \$1,143,414. (*Id.* at 2.) For the reasons stated
below, the Court denies the motion.

29 II. DISCUSSION

30 Under Federal Rule 65 (c):

31 The court may issue a preliminary injunction or a temporary restraining order only if the
32 movant gives security in an amount that the court considers proper to pay the costs and
33 damages sustained by any party found to have been wrongfully enjoined or restrained.

34 Fed. R. Civ. Pro. 65(c). A court, however, has the discretion to allow a party to proceed without
35 posting bond where "requiring security would effectively deny access to judicial review."

People of State of Calif. ex rel. Van de Kamp v. Tahoe Regional Planning Agency, 766 F.2d 1319, 1325 (9th Cir. 1985) (citations omitted). In *Van de Kamp*, the Ninth Circuit also noted that “special precautions to ensure access to the court must be taken where Congress has provided for private enforcement of a statute.” *Id.* at 1325–26. A district court should also consider the likelihood of success on the merits in the decision whether to impose bond. *Id.* at 1326.

6 Here, Plaintiff has little or no means to post a substantial bond. The litigation seeks to
7 enforce provisions of the Clean Water Act, and as such, is in the public interest. Further,
8 Plaintiffs have demonstrated a likelihood of success on the merits, given the indications of the
9 Pollution Control Hearings Board.

III. CONCLUSION

11 For the reasons stated above, Defendants' Motion to Establish Bond is **DENIED**. (Dkt.
12 #40.)

Dated this 4th day of April 2012.

Ronald B. Leighton
RONALD B. LEIGHTON
UNITED STATES DISTRICT JUDGE